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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233690
Party	Plaintiff Image Ten, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Image Ten, Inc., Opposer; v. Rusty Ralph Lemorande, Applicant	Opposition No. 91233690 Serial No.: 87/090468 Mark: NIGHT OF THE LIVING DEAD **IMAGE TEN, INC.'S OPPOSITION TO APPLICANT'S COMBINED MOTION TO COMPEL AND MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

Opposer, Image Ten Inc., ("Opposer") hereby opposes Rusty Ralph Lemorande's ("Applicant") Motion to Compel as follows:

I. OPPOSER PROPERLY SERVED ITS RESPONSES

Applicant had served 105 document production requests upon Opposer, to which Opposer had provided objections and some responses to the first 75. According to Applicant, Opposer had included largely boilerplate objections but stated that it would later provide documents pertaining to certain requests. Applicant claims that Opposer waived its objections by previously serving a limited number of responses.

Per the TTAB Order of February 8, 2018, Opposer properly amended its responses as set forth in Trademark Rules 2.120(d) and (e), as well as TBMP 405.03(e) and 406.05, objecting to each of the discovery requests on the basis that they violate 37 C.F.R. §2.120(e).

Per Section 37 C.F.R §2.120(e),

> *If a party upon which requests have been served belies that the number of requests served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving responses and specific objections to the requests, serve a general objection*

> *on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanies by a copy of the set(s) of the requests which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (f) of this section.*

In its order dated February 8, 2018, the Board stated that "[t]o the extent Opposer objects on the ground of excessive number as set forth in Trademark Rule 2.120(d) and (e), Opposer may serve a general objection *but it should not answer what it considers to be the first 75 requests and object to the rest as excessive*. TBMP §405.03€, 406.05. (Emphasis added.)

Given the Board's order and 37 C.F.R. §2.120(e), Opposer merely amended its responses to abide by the rules as set forth therein. Therefore, Opposer properly served its amended responses on Applicant given the excessive number of document production requests. Moreover, Applicant notes that its responses were timely served on March 7, 2018, one day before the deadline set forth in the Trademark Trial and Appeal Board February 8, 2018 order.

Opposer also notes that the TTAB Order dated February 8, 2018 was served on Applicant. Therefore, Applicant was already on notice that it had exceeded the document production requests but did not contact Opposer to resolve the issue or reduce the number of requests. In fact, Applicant did not serve amended Document Production Requests on Opposer after issuance of the Board's February 8, 2018 order, and before Opposer's time to respond to the outstanding discovery.

Moreover, Applicant, eight (8) days before the end of discovery, on March 12, 2018, requested Opposer's consent to an extension of the discovery period. Again, given that the TTAB had issued its order on February 8, 2018, Applicant did not take any action with regard to the contents of the order to narrow the number of document production requests until just days

before the close of discovery. Such delay appears to be for purposes of lengthening these opposition procedures and harassing Opposer, and not for the purposes of legitimate discovery.

Applicant was previously advised by the TTAB in its order of December 14, 2017 that should it choose not to retain counsel, "he should become familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice (37 C.F.R. Part 2)." Applicant, dissatisfied with the interlocutory order, filed a Petition on January 16, 2018 contesting the rulings on his previously filed Motions, and objecting to the language included in the order regarding *pro se* representation, stating that it is "his right to seek due process in this matter."

Applicant clearly is not familiar with the procedures as set forth in Chapter 37 of the Code of Federal Regulations. If Applicant had been familiar with such rules, Applicant would have made a timely effort to reduce the number of Document Requests to fall within the parameters of the Trademark Rules of Practice. Opposer should not be harmed, prejudiced or forced to extend these proceedings because Applicant is unfamiliar with the processes and procedures of Oppositions and the Trademark Rules of Practice.

Opposer is under no obligation to teach Applicant about the Code of Federal Regulations or the Trademark Rules of Practice. Rather, Applicant has already been informed by the TTAB, in its order of December 14, 2017, that is should become familiar with these rules if he intends to continue to represent himself. Therefore, Opposer should not be punished if Applicant is unfamiliar with these rules and Opposer should not be obligated to teach such rules to Applicant to ensure that he is aware of how things should be properly done.

Applicant states that he emailed a revised request for documents within the 75 request limit. Opposer received the request at 11:59pm on March 13, 2018. Discovery closed on March 20, 2018. Per Trademark Rule 2.120(a)(3), "[i]nterrogatories, requests for production of documents and things, and requests for admission must be served early enough in the discovery period, as originally set or as may have been reset by the Board, so that responses will be due no later than the close of discovery." In this instance, the close of discovery is set for March 20, 2018. Based on Applicant's date of service, responses to the discovery would not be due until April 12, 2018. Therefore, Applicant's amended requests are untimely.

Applicant argues that since he is *pro se*, he must "often study, research and then put such knowledge into action in a matter of days or overnight." Opposer notes that the TTAB Order of February 8, 2018 clearly laid out the guidelines for many of the issues that Applicant is now raising in his Motion to Compel. Applicant should not be given special treatment because he is *pro se*, especially when the TTAB has informed Applicant that he must make himself aware of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice (37 C.F.R. Part 2). Opposer will be prejudiced by the continuous extensions requested by Applicant as Opposer should be entitled to a quick adjudication of its claims. Furthermore, Opposer has had to file responses to Applicant's multiple Motions to Compel, which are inappropriate and unnecessary.

Opposer again states that it has properly responded to Applicant's Production Requests and no additional answers are required. Moreover, given Applicant's constant delay in these proceedings, granting an extension of time would be inappropriate and unfair and would prejudice Opposer's rights in having this matter expeditiously resolved without unnecessary

delay. Therefore, Opposer requests that the discovery period not be extended, the proceedings not be suspended, and all dates as set forth in the February 8, 2018 order remain intact.

Date: March 27, 2018

Respectfully Submitted

BUCHALTER, A Professional Corporation

By: _____/fbhatti/___

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th Day of March, 2018, a true and correct copy of the foregoing **IMAGE TEN, INC.'S OPPOSITION TO APPLICANT'S COMBINED MOTION TO COMPEL AND MOTION TO EXTEND DISCOVERY AND TRIAL DATES** is being served via email, to Rusty Ralph Lemorande at the following address:

lemorande@gmail.com

_____/fbhatti/_____
Attorney for Opposer